

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Anna Steel	Team: Team # 8	CCRB Case #: 200900517	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 01/07/2009 9:48 PM	Location of Incident: East 233rd Street and Barnes Avenue	Precinct: 47	18 Mo. SOL 7/7/2010	EO SOL 7/7/2010	
Date/Time CV Reported Fri, 01/09/2009 5:35 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 01/13/2009 1:06 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Lissette Nieves	04106	911755	PBBX TF
2. POM Robert Roda	01234	939332	047 PCT
3. An officer			
4. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Eric Downes	01758	932572	047 PCT
2. POM Juan Rodriguez	16076	939343	047 PCT
3. POM Robert Konner	10398	938787	047 PCT
4. LT Thomas White	00000	905288	HWY 01
5. LT Anand Bhoj	00000	915053	047 PCT
6. POM Robert Dolan	22752	906127	ESU CAN
7. DTS Michael Mount	01110	919445	ESS 04
8. LT Michael Licitra	00000	906642	E S U
9. DTS Robert Welsome	01419	919858	ESS 04
10. POM Miguel Lajara	10410	938807	PBBX TF

Officer(s)	Allegation	Investigator Recommendation
A.POM Robert Roda	Abuse: On East 233rd Street, PO Robert Roda stopped the car in which § 87(2)(b) was an occupant.	
B. Officers	Abuse: On Gun Hill Road, officers damaged § 87(2)(b)'s property.	
C. An officer	Force: On Gun Hill Road, an officer used pepper spray against § 87(2)(b)	
D. Officers	Force: On Interstate-95, officers used physical force against § 87(2)(b)	
E. Officers	Force: On Interstate-95, officers struck § 87(2)(b) with a blunt instrument.	
F.SGT Lissette Nieves	Force: On Interstate-95, Sgt. Lissette Nieves used a taser on § 87(2)(b)	
G. An officer	Discourtesy: On Interstate-95, an officer spoke obscenely to § 87(2)(b)	

Case Summary

§ 87(2)(b) filed a complaint with IAB on January 8, 2009, resulting in log number 09-00919 (encl. 4a – 4b), which was forwarded to the CCRB on January 13, 2009 (encl. 5a – 5b).

On January 7, 2009, at about 9:48 PM, PO Robert Roda from the 47th Precinct tried to stop § 87(2)(b)'s vehicle near East 240th Street and Carpenter Street in the Bronx. § 87(2)(b) refused to stop and led officers on a 30 minute vehicle chase which culminated in his arrest. The following allegations resulted from the officers' actions:

- **Allegation A – Abuse of Authority:** On East 233rd Street, PO Robert Roda stopped the car in which § 87(2)(b) was an occupant. § 87(2)(g)
- **Allegation B – Abuse of Authority:** On Gun Hill Road, officers damaged § 87(2)(b)'s property. § 87(2)(g)
- **Allegations C, D, and E – Force:** On Gun Hill Road, an officer used pepper spray against § 87(2)(b). On Interstate-95, officers used physical force against § 87(2)(b). On Interstate-95, officers struck § 87(2)(b) with a blunt instrument. § 87(2)(g)
- **Allegation F – Force:** On Interstate-95, Sgt. Lissette Nieves used a taser on § 87(2)(b).
- **Allegation G – Discourtesy:** On Interstate-95, an officer spoke obscenely to § 87(2)(b).

This case was originally assigned to Investigator Nicholas. Following his resignation, the case was reassigned to Investigator Steel on October 27, 2009.

Results of Investigation

Civilian Statement(s)

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)-old black male who is 5'8" tall, weighs 150 pounds, and has black hair and brown eyes.

§ 87(2)(b) gave statements to medical personnel (encl. 16a – 16i) and was interviewed by Internal Affairs on January 8, 2009 (encl. 6a – 6d). He was interviewed at the § 87(2)(b) on March 5, 2009 (encl. 7a – 7d). § 87(2)(g) § 87(2)(b) stated that on January 7, 2009, at about 9:10 PM, an officer, identified through the investigation as PO Robert Roda from the 47th Precinct, told him to pull over near East 233rd Street and Carpenter Street in the Bronx. As his license was suspended, § 87(2)(b)

§ 87(2)(b) ‘panicked’ and sped off, followed by the officers (**Allegation A**). § 87(2)(b) admitted to medical personnel (encl. 16a – 16i) and to Internal Affairs (encl. 6a – 6d) that he had smoked crack cocaine and consumed alcohol prior to the incident, which he denied in his CCRB interview (7a – 7d). Several police vehicles joined the chase. At some point, § 87(2)(b) turned his vehicle around and reversed into two parked vehicles before continuing to drive. A marked police vehicle drove abreast of him on Gun Hill Road. Several white male officers threw objects at his vehicle. He could not further describe these officers and did not know what they were throwing. The objects were of sufficient weight to allegedly break his front windshield and both windows on the driver’s side of the vehicle (**Allegation B**). Sometime thereafter, an officer pepper-sprayed § 87(2)(b) through his driver’s side window (**Allegation C**). He did not mention being pepper-sprayed when seen by medical personnel (encl. 16a – 16i) or when interviewed by Internal Affairs (encl. 6a – 6d). § 87(2)(b) ultimately drove onto Interstate-95, speeding at a rate of 80 to 90 miles an hour. He slowed his vehicle when traffic ahead of him came to a stop. The police Dodge Charger bumped the rear left side of his vehicle as he slowed, causing him to spin ninety degrees to the left. The front of his vehicle collided with the median. § 87(2)(b) did not sustain any injuries as a result of this collision.

Several white male officers, whom § 87(2)(b) could not further describe, pulled him out of his vehicle through the broken passenger’s side window by grasping him underneath his upper arms (**Allegation D**). The officers threw § 87(2)(b) to the ground, where they proceeded to strike him with their hands, feet and objects which were black, square and hard (**Within Allegation D and Allegation E**). He did not mention being struck with any objects when seen by medical personnel (encl. 16a – 16i) or when interviewed by Internal Affairs (encl. 6a – 6d). § 87(2)(b) sustained cuts on his head as a result of being struck. Aside from stating that he was punched multiple times on his head and ribs, he could not further describe the force which was used against him or estimate how many times he was struck. § 87(2)(b) denied resisting or struggling against the officers. § 87(2)(b) was eventually handcuffed by two officers. An officer, identified through the investigation as Sgt. Lissette Nieves of Patrol Borough Bronx Task Force, then shot § 87(2)(b) with a taser (**Allegation F**). At some point, an officer called § 87(2)(b) a ‘fucking asshole’ and a ‘stupid fuck’ (**Allegation G**). He did not mention this in his interview with Internal Affairs (encl. 6a – 6d). § 87(2)(b) was transported to § 87(2)(b) and diagnosed with rib and head contusions (encl. 16a – 16i). As a result of his arrest, § 87(2)(b) was charged with § 87(2)(b).

NYPD Statement(s):

Subject Officer: PO Robert Roda

- PO Robert Roda is a § 87(2)(b)-old white male who is 5’7” tall, weighs 175 pounds, and has brown hair and brown eyes.
- On the day of the incident, PO Roda was assigned to anti-crime and worked from 5:30 PM to 2:05 AM with PO Robert Konner and PO Juan Rodriguez in plainclothes..

Police Reports

PO Roda prepared the arrest (encl. 10a – 10b) and complaint reports (encl. 11a – 11b) for § 87(2)(b) noting that he tried to flee the scene of his arrest on foot and that a non-lethal restraining device was used against him.

CCRB Testimony

PO Roda was interviewed at the CCRB on June 10, 2009 (encl. 12a – 12c). He stated that on January 7, 2009, at about 9:10 PM, he saw § 87(2)(b) drive through a red light at an East 233rd Street intersection. PO Roda tried to pull him over, but § 87(2)(b) refused to stop. PO Roda requested assistance. PO Roda and his partners drove abreast of § 87(2)(b)'s vehicle at one point. PO Roda opened his window, pointed with his hand, and used the PA system to tell § 87(2)(b) to pull over. PO Roda stated that none of the officers ever threw any objects at his vehicle. Officers from multiple commands began to join the chase as § 87(2)(b) continued driving. § 87(2)(b) eventually stopped his vehicle somewhere within the confines of the 52nd Precinct. PO Roda and another unit parked their vehicles towards his to box him in. PO Roda approached § 87(2)(b)'s vehicle on foot, identified himself as an officer, and told him to turn off his vehicle. § 87(2)(b) turned his wheel to the right, accelerating directly towards PO Roda, who jumped onto the hood of his police vehicle to avoid being hit. § 87(2)(b) drove until he collided with a parked civilian vehicle. He reversed, struck a second parked vehicle, and then accelerated forward until he struck a third vehicle. He then seemed unable to move his vehicle. PO Roda ran towards him, tried to unlock his driver's side door, and ordered § 87(2)(b) to open the doors of his vehicle. § 87(2)(b) refused to comply. § 87(2)(b) managed to move his vehicle at this time, reversing across the street until he struck another parked vehicle, and then fled through the police barricade. PO Roda entered the backseat of the nearest available police vehicle and continued to pursue § 87(2)(b) following two other police vehicles. PO Roda and the officers with whom he was traveling, whom he could not identify, almost immediately lost sight of § 87(2)(b)'s vehicle. PO Roda went to the 52nd Precinct stationhouse. He was not present when § 87(2)(b) was apprehended.

Subject Officer: Sgt. Lissette Nieves

- *Sgt. Nieves is a § 87(2)(b)-old Hispanic female who is 5'2" tall, weighs 155 pounds, and has brown hair and brown eyes.*
- *On the day of the incident, Sgt. Nieves was assigned to patrol and worked from 5:13 PM to 2:10 AM with PO Miguel Lajara in uniform and in a marked police vehicle.*

CCRB Statement

Sgt. Nieves was interviewed at the CCRB on June 29, 2009 (encl. 14a – 14c). She stated that on January 7, 2009, at about 9:10 PM, she joined the vehicle pursuit of § 87(2)(b) first spotting his vehicle driving on the Major Deegan Expressway. Sgt. Nieves coordinated the shutdown of all traffic on the expressway. § 87(2)(b) managed to maneuver between two police vehicles and continued traveling southbound. Officers from multiple commands continued to chase § 87(2)(b) who drove onto Interstate-95. His vehicle eventually got stuck in traffic. Sgt. Nieves was not in the lead of the vehicular chase. She was later told that § 87(2)(b) tried to execute a u-turn and drove his vehicle into the concrete barrier separating the southbound and northbound lanes of traffic. Sgt. Nieves responded to the scene and saw that the front of § 87(2)(b)'s vehicle was perpendicular to the median. The damage on the front of his vehicle led Sgt. Nieves to determine he had crashed his vehicle. When she arrived, § 87(2)(b) was trying to climb out of his broken rear windshield. He ultimately climbed out of a rear window without assistance and fell to the ground, landing on his stomach. No officers removed him from the vehicle. Officers approached to place him in handcuffs. He resisted by kicking, punching and refusing to give up his arms or comply with the officers'

commands. Besides trying to grab his hands, Sgt. Nieves did not see any officers use any additional force against § 87(2)(b). Sgt. Nieves never saw any officers punch or kick § 87(2)(b) strike him with an inanimate object, or pepper-spray him. Sgt. Nieves never saw any officers throw anything at § 87(2)(b)'s vehicle while it was in motion. Sgt. Nieves' was kicked in the knee and fell to the ground. When it became apparent that the officers were incapable of controlling § 87(2)(b), Sgt. Nieves instructed them to step back and fired her taser at him once, striking him in the back. Sgt. Nieves confirmed that using the taser offered the path of least resistance in getting him to stop assaulting the officers. Sgt. Nieves never heard any officer call § 87(2)(b) a "fucking asshole" or a "stupid fuck." § 87(2)(b) was handcuffed and transported to § 87(2)(b).

Officers Not Interviewed by the Investigation

§ 87(2)(g)

Medical Records

According to medical records from § 87(2)(b) (encl. 16a – 16i), § 87(2)(b) was admitted with minor abrasions on his face, left chest wall, right abdomen, and his mid-back. Medical personnel noted that he was in a vehicle accident and had not been wearing a seatbelt. A CT scan showed no evidence of fracture or intracranial injury to his skull. All imaging from x-rays were negative for blunt trauma or fractures. Medical personnel found no evidence of traumatic injury to his chest. Toxicology records were positive for cocaine abuse. He was diagnosed with contusions and released to police custody.

NYPD Document(s)

SPRINT Record

According to a SPRINT record (encl. 17a – 17h), the vehicle pursuit involving § 87(2)(b) began at 8:44 PM. At 8:50 PM, Central was advised that he had attempted to run over an officer. At 9:15 PM, an anti-crime sergeant reported that § 87(2)(b) had been apprehended and requested EMS, which arrived at 9:51 PM.

Unusual Occurrence Report

According to an unusual occurrence report (encl. 20), PO Roda attempted to pull over § 87(2)(b) when he ran a red light at 233rd Street and Barnes Avenue. He refused to comply, continued driving, and led the officers on a vehicle chase on Gun Hill Road, into the confines of the 52nd Precinct, and was ultimately apprehended at New England Thruway and Country Club Road. During the pursuit, § 87(2)(b) briefly stopped his vehicle, attempted to use his vehicle to strike an officer, and hit several parked vehicles.

Arrest Photo

§ 87(2)(b)'s arrest photo showed two minor abrasions on his forehead (encl. 8).

Arrest for Incident and Disposition

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]

Status of Civil Proceedings

- [§ 87(2)(b)] filed a Personal Injury Claim with the City of New York on [§ 87(2)(b)]
[REDACTED], claiming an unspecified monetary amount in damages as redress for personal injuries sustained during the incident (encl. 24a – 24b).

Civilian Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Civilian(s) CCRB History

- This is the first CCRB complaint filed by [§ 87(2)(b)]

Subject Officer(s) CCRB History

- PO Roda has been a member of the service for four years, Sgt. Nieves for sixteen years, and there are no substantiated CCRB allegations against them (encl. 3a – 3c).

Conclusion

Identification of Subject Officer(s)

- PO Roda admitted to attempting to stop [§ 87(2)(b)]'s vehicle and initiating the subsequent pursuit of his vehicle.
- Sgt. Nieves admitted to using a taser on [§ 87(2)(b)]
- [§ 87(2)(b)] could not describe the officers who damaged his property, used pepper spray against him, sued force against him, struck him with blunt instruments, or directed profanity towards him. [§ 87(2)(g)]
[REDACTED]

Investigative Findings and Recommendations

Allegation A – Abuse of Authority: On East 233rd Street, PO Robert Roda stopped the car in which [§ 87(2)(b)] was an occupant.

It is undisputed that PO Roda attempted to stop [§ 87(2)(b)]'s vehicle and undisputed that [§ 87(2)(b)] then sped away in his vehicle, thus initiating a vehicle chase which SPRINT records confirm lasted 30 minutes (encl. 17a – 17h). Kamins, New York Search & Seizure, p. 5-14 (2007 ed.) notes that “an officer may stop a vehicle to investigate criminal activity when he has a reasonable suspicion that its occupants have been engaged...in violation of the law” (encl. 1). PO Roda stated that he decided to stop [§ 87(2)(b)]'s vehicle when he saw him drive through a red light on East 233rd Street. SPRINT records (encl. 17a – 17h) corroborated his

testimony. § 87(2)(g)

§ 87(2)(b) tested positive for cocaine use when seen by medical personnel (encl. 16a – 16i). § 87(2)(g)

Allegation B – Abuse of Authority: On Gun Hill Road, officers damaged § 87(2)(b)s property.

Allegation C – Force: On Gun Hill Road, an officer used pepper spray against § 87(2)(b)

Allegation D – Force: On Interstate-95, officers used physical force against § 87(2)(b)

Allegation E – Force: On Interstate-95, officers struck § 87(2)(b) with a blunt instrument.

Allegation G – Discourtesy: On Interstate-95, an officer spoke obscenely to § 87(2)(b)

§ 87(2)(b) alleged that officers threw unknown objects at his windows, breaking his front windshield and both drivers' side window. PO Roda and Sgt. Nieves denied this occurring. Sgt. Nieves testified that § 87(2)(b) crashed his vehicle into the median on Interstate-95 and that the windows of his vehicle were broken when she arrived at the scene. § 87(2)(g)

§ 87(2)(b) alleged that an officer pepper-sprayed him during the vehicle pursuit while his vehicle was in motion. § 87(2)(g) He did not mention being pepper-sprayed when seen by medical personnel (encl. 16a – 16i) or when interviewed by Internal Affairs (encl. 6a – 6d). Sgt. Nieves and PO Roda stated that an officer never pepper-sprayed him during the incident. § 87(2)(g)

§ 87(2)(b) alleged pulled him out of his vehicle by his arms, punched and kicked him repeatedly, and struck him with objects which were square and hard. He alleged that, once handcuffed, an officer called him a 'fucking asshole' and a 'stupid fuck.' § 87(2)(g)

PO Roda and Sgt. Nieves denied that any officers preformed the aforementioned actions. § 87(2)(b) was unable to describe the officers who used force against him and he did not mention officers striking him with objects or directing profanity towards him when interviewed by Internal Affairs (encl. 6a – 6d). While medical personnel noted that § 87(2)(b) had contusions on his head, face, ribs, and back (encl. 16a – 16i), they reported that these injuries were minor and a CT scan and x-rays showed no evidence of fracture or traumatic injury. Sgt. Nieves testified that § 87(2)(b) exited his vehicle and lied on the ground without assistance. She further stated that an officer never called him a 'fucking asshole' or a 'stupid fuck.' § 87(2)(g)

§ 87(2)(g)

Allegation F – Force: On Interstate-95, Sgt. Lissette Nieves used a taser on § 87(2)(b)

It is undisputed that Sgt. Nieves used a taser on § 87(2)(b). According to § 87(2)(b), he never resisted or struggled against the officers. Sgt. Nieves testified that when officers approached to place him in handcuffs, he resisted by kicking, punching and refusing to give up his arms. Sgt. Nieves' was kicked in the knee and fell to the ground. § 87(2)(g)

§ 87(2)(b) Sgt. Nieves explained that when it became apparent that the officers were incapable of controlling § 87(2)(b), she instructed the officers near § 87(2)(b) to step back and fired her taser at him once, striking him in the back. According to Patrol Guide Section 216-05, an officer may use a non-lethal restraining device to prevent serious physical injury when a subject is posing a danger to either himself or others (encl. 2a – 2f). § 87(2)(g)

Team: 8

:

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

